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PATENT

REMARKS

Claims 1-3 and 5-15 remain in the application.

Claim 14 was not substantively rejected, and has been rewritten in independent form to incorporate the limitations of claim 1 from which it originally depended.

Claims 21-24 have been added.

§112 rejections

Claims 14 and 15 have been amended to obviate the §112 rejection.

§102 rejections

In the prior action, claims 1-2, 5, 11-12, and 14-15 were rejected under §102(e) as anticipated by Chapman.

The current action states that these are withdrawn after consideration of applicant's arguments.

However, in the current action, claims 1-2, 5, 11-12 are again rejected under §102(e) as anticipated by Chapman, with little difference in the rejection, though it is stated to be "stronger."

Applicant deserves to have the arguments addressed, not avoided. Most of the key issues remain in the application, and have not been addressed, even though this is now the fifth non-final action on essentially unchanged claims, with none of the cited references being unavailable at the time of the first action. This is the third time that old rejections are withdrawn in view of applicant's arguments, and new rejections made (the other instance involved the withdrawal of allowance in view of a reference that was available at the time of each of the other prior office actions.)

Applicant requests that the substance of the arguments be considered, and each allegation of error in the rejection be completely addressed, so that the case may move forward toward a conclusion.

Chapman discloses a flashlight with a dimming function controlled by rotating a tail end cap, and a power supply function controlled by twisting the front housing section.

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The rejection is founded on several errors:

1. Element 60 is not shown in Figure 36 as alleged.
2. Element 382 is not shown in Figure 40 as alleged.
3. Element 314 is not shown in Figures 36 and 40 as alleged.
4. The only figure (21) showing the element (314) alleged as a controller fails to show either of the elements alleged to be switches, or any connections. No connection between these elements is shown, as alleged.
5. The action fails to allege any element comprising a first switch input.
6. The element 372 alleged a second switch input is shown only in positions remote from the element (314) alleged as a controller.
7. The paragraph [0087] alleged to disclose controller operation does not refer to any of the Figures in which the cited elements are shown.
8. The paragraph [0087] alleged to disclose controller operation does not refer to any of the cited elements, including the element (314) alleged as the controller whose operation it purports to disclose.
9. The paragraph [0087] alleged to disclose controller operation does not refer to any of the Figures in which the cited elements are shown.
10. The paragraphs [0091-92] alleged to disclose "a ring" make no reference to a ring. An end knob is not a ring.

For each of these reasons, the action is deficient, and the cited references does not appear to disclose many of the claimed features of applicant's invention.

Claims 1-3, 5-13 depend from claim 1 and should be allowable for the above reasons and because of the features set forth therein.

Claim 12 should be allowable for the additional reason that there is no evidence in the cited passage that the element cited as the second switch (372) is operable to establish a degree of power level, based on a duration of force on the switch to establish the degree of power level. The cited element appears to respond only to position.

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§103 rejections

Claims 3 and 13 were rejected under §103 as unpatentable over Chapman.

The rejection of claims 3 and 13 is traversed because the location of switches with their required circuitry is not merely a matter of rearranging of the location of components, which is not necessarily obvious.

The asserted motivation is inadequate because there is no evidence to suggest that Chapman would obtain "easy access" by putting the rotatable end knob in another location. Nor is there even evidence that this would be possible without extensive engineering (in hindsight) to turn an end knob into something else, so that it could operate in the claimed manner.

Moreover, there is no suggestion of how to move switch 60 to the end of the light, and convert it into a switch that operates as claimed, and which would provide any advantages. The rejection requires significant engineering, and substituting different parts, not merely moving existing ones.

A rejection based on arbitrary rearrangements of parts without adequate true motivation not based on hindsight is improper.

The rejections of claims 6-9 are traversed because there is no evidence that the magnetic reed switches of Coffman could be adapted to the variable dimming resistor of Chapman. How would such a system work? What amount of engineering would be needed to convert Chapman?

Moreover, the rejection is further traversed because the rejection lacks adequate motivation, asserting only "to provide a multifunction switching arrangement that is particularly resistant to corrosion and damage due to water." This motivation is inadequate because there is no indication that Chapman lacks a multifunction capability, or resistance to corrosion and water damage. Without such a lack, there is no motivation to make a complicated wholesale change to the switching configuration. In fact, the complexity of such a modification would teach away from its adoption. The motivation and rejection appear to be drawn in hindsight based on applicant's disclosure. (This paragraph is a repeat of applicant's prior response, and was ignored in the current action.)

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Claim 10 was rejected under 35 USC §103(a) is being unpatentable over Chapman in view of Hauck. The rejection is repeated verbatim, and ignores applicant's ample arguments presented on the prior response:

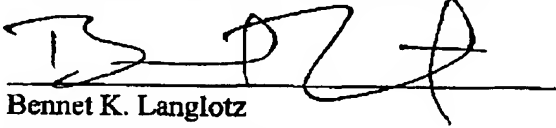
The rejection is in error first because the references are from widely different fields of art; Hauck is a novelty device that has several different color lamps. One seeking to improve a flashlight would not look to a novelty toy for improvements.

The second error is in the inadequacy of the proposed motivation to adopt the colored lights of Hauck. The action asserts "aesthetic appeal and greater control with respect to illumination", with no evidence that changing light colors would provide enhanced aesthetics, that colors would be desired by Chapman, or how offering multiple colors has any positive effect on "control." Colors provide color alternatives, not necessarily desired ones, and they do not offer control.

The third error in the rejection is in that there is no evidence of how or whether adoption of the Hauck toy concept could be practically applied to Chapman. Adopting multi color functionality would require significant mechanical, electrical, and optical changes, and control schemes that are not disclosed. It is disadvantageous to incur complex and uncertain modifications in a product when there is no suggestion that the change is desirable, except in hindsight. Accordingly, the references teach away from the proposed combination.

All pending claims should be allowable for the above reasons. Reconsideration of the application is respectfully requested.

Respectfully submitted,
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